

STIPULATION AND SETTLEMENT AGREEMENT

I. PARTIES

This Stipulation and Settlement Agreement ("Agreement") is made as of this 11th day of August, 2008, between the United States of America, on behalf of its agencies, the Department of Justice ("DOJ"), and the Drug Enforcement Administration ("DEA") (collectively the "United States"), and Harding Pharmacy and Liquor, M & C Drug, Inc., and Mr. Myron F. Lesh (collectively, "Harding"), through their authorized representatives.

II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

WHEREAS, at all times material herein, M & C Drug Inc. / Harding Pharmacy and Liquor was a retail pharmacy registered with the Drug Enforcement Administration (DEA), assigned number AH174680, and located and doing business at 305 East Ridgewood Ave., Ridgewood, NJ 07451, within the District of New Jersey; and

WHEREAS, Mr. Myron F. Lesh is the president and sole owner of M & C Drug Inc. / Harding Pharmacy and Liquor,

WHEREAS, Harding was informed on June 15, 2007 that one of its employees was likely stealing controlled substances from Harding Pharmacy and

Liquor; and

WHEREAS, on October 2, 2007, that employee was arrested and found to be in possession of controlled substances he admitted were stolen from Harding Pharmacy and Liquor, his continued place of employ; and

WHEREAS, the United States, in the course of conducting an investigative audit of Harding's statutory and regulatory compliance as of October 4 and 5, 2008, the DEA concluded that Harding committed no less than 92 separate violations of the laws and regulations implementing the Controlled Substances Act ("the Act") as detailed in attachment 1 (Intent to sue letter dated April 23, 2008) to this agreement; and

WHEREAS, each of the documented 92 violations of law or regulation carries a maximum fine of \$10,000; and

WHEREAS, Harding has, at all times, cooperated fully and completely with the investigation by the United States; and

WHEREAS, in order to avoid the delay, uncertainty, inconvenience and expense of protracted litigation of these claims, the Parties reach a full and final settlement as set forth below.

III. TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual promises, covenants

and obligations set forth below, and for good and valuable consideration as stated herein, the parties agree before the taking of any testimony, without adjudication or admission of any issue of fact or law, and upon consent and agreement of the Parties to this Stipulation and Settlement Agreement, it is hereby agreed and stipulated to that:

1. Harding shall pay, or cause to be paid, a total civil penalty pursuant to the provisions of 21 U.S.C. §§ 842(c), of the sum of ONE HUNDRED THOUSAND (\$100,000.00) dollars to the United States. The first payment of TWENTY-FIVE THOUSAND (\$25,000) dollars shall be made by wire transfer no later than fourteen (14) days after the date this agreement is executed. Instructions for the wire transfer shall be provided by the United States Attorney's Office, District of New Jersey, Financial Litigation Unit. The remaining SEVENTY-FIVE THOUSAND dollars shall be paid by wire transfer in six installments of TWELVE-THOUSAND-FIVE-HUNDRED (\$12,500) dollars every sixty (60) days after the initial payment date.
2. In consideration of the obligations of Harding set forth in this Agreement, conditioned upon the Harding's payment in full of the Settlement Amount, and subject to Paragraph 7, below (concerning bankruptcy proceedings commenced within 91 days of the effective date of this Agreement), the

United States (on behalf of itself, its officers, agents, agencies and departments) agrees to release Harding, together with its current and former parent corporations, each of their direct and indirect subsidiaries, brother or sister corporations, divisions, current or former owners, shareholders, officers, directors, trustees, affiliates, employees, successors and assigns of any of them, from any civil or administrative claim the United States has or may have under Controlled Substances Act, as amended, for the Covered Conduct only. Nothing in this Paragraph precludes DOJ or DEA from taking action against entities or persons, or for conduct and practices, for which civil claims have been reserved in Paragraph 8, below.

3. If the civil penalty provided for in this Agreement is not timely paid, the United States shall be entitled to interest on any overdue amount from the due date at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. In addition, after the first thirty (30) days that any amount of a penalty is overdue, Harding shall pay a late payment handling charge of ONE HUNDRED (\$100.00) dollars, and an additional charge of FIFTY (\$50.00) dollars, for each and every subsequent thirty (30) day period for which any monies are overdue. Furthermore, a six (6%) percent per annum penalty will be assessed on any principal amount not paid within

ninety (90) days of the date of entry of this Agreement, pursuant to 31 U.S.C. § 3717. Further, Harding shall be liable for reasonable attorneys' fees and costs incurred by the United States to collect any amounts due under this Agreement. Additionally, if any portion of the civil penalty provided for in this Agreement is not timely paid, Harding agrees that the running of any and all statutes of limitations which may be applicable to any and all civil claims that may be brought by the Government arising out of the Covered Conduct, are and shall be tolled for a period commencing on the date this Agreement is executed, until the time when the civil penalty, interest, interest penalty, fees and costs are paid in full, or the Government files a Complaint in the United States District Court. Harding agrees not to plead, argue or otherwise assert as a defense to any of the Government's civil claims the defense of laches, or any other defense based upon the Government's delay in commencing litigation during the tolling period specified in this Paragraph.

4. The provisions of this Agreement shall apply to, be binding on and inure to the benefit of the Parties to this action and their successors and assigns.
5. Except as provided in Paragraph 2 and 4, this Agreement is intended to be for the benefit of the Parties, only, and by this instrument the Parties do not

release any claims against any other person or entity, except as otherwise stated in this Agreement.

6. Harding expressly warrants that it has reviewed its financial situation and that it is currently solvent within the meaning of 11 U.S.C. § 547(b)(3), and will remain solvent following its payment to the United States hereunder.

Further, the Parties expressly warrant that, in evaluating whether to execute this Agreement, the Parties (i) have intended that the mutual promises, covenants and obligations set forth herein constitute a contemporaneous exchange for new value given to Harding, within the meaning of 11 U.S.C. § 547(c)(1), and (ii) have concluded that these mutual promises, covenants and obligations do, in fact, constitute such a contemporaneous exchange.

7. In the event Harding commences, or a thirty party commences, within 91 days of the effective date of this Agreement, any case, proceeding, or other action (a) under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have any order for relief of any of Harding's debts, or seeking to adjudicate Harding as bankrupt or insolvent, or (b) seeking appointment of a receiver, trustee, custodian or other similar official for Harding or for all or any substantial part of any of Harding's assets, Harding agrees as follows:

- a. Harding's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and Harding will not argue or otherwise take the position in any such case, proceeding or action that: (i) Harding's obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) Harding was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the United States hereunder; or (iii) the mutual promises, covenants and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Harding.
- b. In the event that Harding's obligations hereunder are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the United States, at its sole option, may rescind the releases in this Agreement, and bring any civil and/or administrative claim, action or proceeding against Harding for the claims that would otherwise be covered by the releases provided in Paragraphs 2 and 3, above. If the United States chooses to do so, Harding agrees that (i) any such claims,

actions or proceedings brought by the United States are not subject to an “automatic stay” pursuant to 11 U.S.C. § 362(a) as a result of the action, case or proceeding described in the first clause of this Paragraph, and that Harding will not argue or otherwise contend that the United States’ claims, actions or proceedings are subject to an automatic stay; (ii) that Harding will not plead, argue or otherwise raise any defenses under theories of statute of limitations, laches, estoppel or similar theories, to any such civil or administrative claims, actions or proceeding which are brought by the United States within 10 calendar days of written notification to Harding that the releases herein have been rescinded pursuant to this Paragraph, except to the extent such defenses were available as of the date of this Agreement; and (iii) the United States has a valid claim against Harding in the amount of \$920,000.00, and the United States may pursue its claim, inter alia, in the case, action or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

- c. Harding acknowledges that its agreements in this Paragraph are

provided in exchange for valuable consideration provided in this Agreement.

8. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person (including Harding) are any and all of the following:
- (1) Any civil, criminal or administrative claims arising under Title 26, U.S. Code (Internal Revenue Code);
 - (2) Any criminal liability, unless prior to the effective date of this Agreement, written notification is received of a non-prosecution Agreement;
 - (3) Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from any and all Federal programs;
 - (4) Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
 - (5) Any claims based upon such obligations as are created by this Agreement;
 - (6) Any civil or administrative claims against individuals, including current or former directors, officers,

employees, agents or shareholders of Harding who, on or before July 11, 2008, received written notification that they are the target of a criminal investigation (as defined in the United States Attorneys' Manual), were criminally indicted or charged, or were convicted, or who entered into a criminal plea agreement related to the Covered Conduct.


9. Notwithstanding any releases as enumerated in Paragraph 2 of this Agreement, DEA reserves the right, and will not be precluded by this Agreement from, issuing an Order to Show Cause to revoke or suspend any or all of the DEA registration of Harding based upon any future violations of 21 U.S.C., sec. 801 et seq., and related regulations. Should DEA choose to file any Order or Orders to Show Cause under these circumstances, this Agreement will not preclude DEA from introducing into evidence at any administrative hearing the Covered Conduct serving as the basis for this Agreement in order to prove the allegations in such Order or Orders to Show Cause. In such case, Harding shall be entitled to present all defenses and assertions pertaining to the Covered Conduct.
10. Each party to this Agreement will bear its own legal and other costs

incurred in connection with this matter, including the preparation and performance of this Agreement.


11. Premium represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.
12. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement will be the United States District Court for the District of New Jersey.
13. The undersigned individuals signing this Agreement on behalf of Harding represent and warrant that they are authorized by Harding to execute this Agreement. The undersigned United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.
14. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement.
15. This Agreement is effective on the date of signature of the last signatory to the Agreement.

FOR THE UNITED STATES OF AMERICA:

CHRISTOPHER J. CHRISTIE
United States Attorney

Dated: 11 Aug 08 By: 
DAVID E. DAUENHEIMER
Assistant United States Attorney

FOR HARDING

Dated: _____ By: 
MYRON F. LESH
President, M & C Drug Inc.